

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

UNITED STATES OF AMERICA,)
Plaintiff,)
v.)
UNDRAE MOSEBY (17))
a/k/a SOUNDRAE EVANS,)
Defendant.)
No. 1:17-cr-00222-JMS-TAB

ORDER

This case involves a multi-defendant drug conspiracy and is set for trial on July 8, 2019.

On July 3, 2019, after business hours, Defendant Undrae Moseby filed an Objection to the Government's Use of Wiretap Transcript Designations. [[Filing No. 773](#).] After the Government responded to Mr. Moseby's Objection, [[Filing No. 774](#)], Mr. Moseby filed a Motion to Suppress at 9:42 p.m. on July 4, 2019 raising essentially the same arguments, [[Filing No. 777](#)]. In his Objection and Motion to Suppress, Mr. Moseby argues that any evidence obtained from his cellular telephone, which was seized pursuant to a November 15, 2017 search warrant, should be excluded because Mr. Moseby was not specifically identified in the search warrant application. The Government opposes Mr. Moseby's motion. [[Filing No. 774](#).]

I. BACKGROUND

On November 15, 2017, a search warrant was issued authorizing the search of a residence at 3009 Metz Court in Indianapolis, Indiana. [[Filing No. 774-1](#).] The search warrant listed items to be searched and seized, and included “[c]ellular telephones and all electronic data stored within the memory of the cellular telephones.” [[Filing No. 774-1 at 5](#).] The search warrant was issued

pursuant to an Application for Search Warrant which requested the search of “[c]ellular telephones and all electronic data stored within the memory of the cellular telephones,” and included a sworn Affidavit in Support of Search Warrant Application that discussed a list of target cellular telephones but did not specifically mention Mr. Moseby’s cellular telephone. [[Filing No. 774-2](#).]

Mr. Moseby claims that his cellular telephone was “in a bag from a cell phone store along with a purchase agreement of that phone from the carrier” at the residence located at 3009 Metz Court on November 17, 2017 when it was seized pursuant to the November 15, 2017 search warrant. [[Filing No. 773 at 7](#).] Evidence was then extracted from Mr. Moseby’s cellular telephone, which Mr. Moseby now seeks to suppress.

II. DISCUSSION

In his motion, Mr. Moseby argues that neither he, his cellular telephone number, or other identifying factors of his cellular telephone were listed in the search warrant or its attachments, his cellular telephone number was not listed as a target phone in either of the two indictments, and law enforcement had not conducted any surveillance on him – he was basically in the wrong place at the wrong time. [[Filing No. 773 at 5](#).] He contends that, although there was a pending Indiana state warrant for his arrest, this circumstance did not provide an exception to the requirement that there be a warrant to seize his cellular telephone. [[Filing No. 773 at 6-8](#).] Mr. Moseby also argues that the good-faith exception to the Fourth Amendment does not apply, that his “presence [at the location where the search warrant was executed] was fortuitous and as a result the search warrant did not apply to him,” and that “if the Government wanted to search his phone, it would have been easy for law enforcement to get another warrant.” [[Filing No. 773 at 9](#).]

The Government argues in its response that Mr. Moseby’s motion is difficult to understand, but that he appears to be challenging the search of his cellular telephone by the FBI as seized

pursuant to the November 15, 2017 search warrant. [[Filing No. 774 at 2.](#)] It asserts that the search warrant authorized the FBI to search and seize “[c]ellular telephones and all electronic data stored within the memory of the cellular telephones” found at the Metz Court residence, and that the warrant application contained sufficient probable cause to believe that “cellular telephones constituted instrumentalities of the drug trafficking investigation, that the FBI would likely find relevant cellular telephones at [the residence], and that the electronic memory within these cellular telephones would contain evidence of the drug trafficking crimes.” [[Filing No. 774 at 3.](#)] The Government also contends that to the extent probable cause for the search of Mr. Moseby’s cellular telephone was lacking, the good faith exception applies to prevent suppression of the search because the FBI agents “relied in objective good faith on a facially valid search warrant.” [[Filing No. 774 at 4.](#)]

A. Nature and Timeliness of the Mr. Moseby’s Motion

Although the first filing was titled as an “Objection to the Government’s Use of Wiretap Transcript Designations,” [[Filing No. 773 at 1](#)], Mr. Moseby’s objection was actually a motion to suppress evidence resulting from the search of his cellular telephone pursuant to the November 15, 2017 search warrant. The deadline for motions to suppress in this case was February 4, 2019, [[Filing No. 501 at 2](#)]. Perhaps recognizing this, Mr. Moseby filed his Motion to Suppress a day after his Objection, raising essentially the same arguments. He argues that the untimely nature of his Motion to Suppress is justified because his counsel has had trouble reviewing the discovery produced in this case. [[Filing No. 777 at 1-3.](#)] As discussed in detail in its Orders denying Mr. Moseby’s two Motions to Continue, [[Filing No. 684](#); [Filing No. 720](#)], the Court has found that Mr. Moseby’s counsel has had ample time to review the discovery in this case, which was produced by the Government in a timely and user-friendly fashion. Moreover, the Court assumes that the

issue of whether there was a search warrant covering Mr. Moseby’s cellular telephone would have come up during the Government’s reverse proffer with Mr. Moseby in March 2019. It would be well within the Court’s discretion to deny Mr. Moseby’s motion – filed five months late and four days before a trial that has been scheduled since October 26, 2018 is set to begin – as untimely. *United States v. Suggs*, 703 Fed. App’x 425, 428 (7th Cir. 2017) (“Because trial counsel did not establish good cause and thus the motion was not allowed, we need not consider the asserted ground for suppression, not even for plain error”). However, given the voluminous discovery in the case, the Court considers the merits of Mr. Moseby’s Objection and Motion to Suppress below.

B. Compliance With the Fourth Amendment

The Fourth Amendment to the United States Constitution provides:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

“Searches undertaken pursuant to valid search warrants are presumptively valid.” *Archer v. Chisholm*, 870 F.3d 603, 613-14 (7th Cir. 2017). In order to be valid, a search warrant must: “(1) be issued by a neutral and disinterested magistrate; (2) establish probable cause that the evidence sought in the warrant will aid in obtaining a conviction of a particular offense; and (3) describe with particularity the things to be seized and the place to be searched.” *Id.* at 614 (citing *Dalia v. United States*, 441 U.S. 238, 255 (1979)). “Although the fourth amendment requires that a search warrant describe the objects of the search with reasonable specificity, it need not be elaborately detailed.” *United States v. Somers*, 950 F.2d 1279, 1285 (7th Cir. 1991), cert. denied, 504 U.S. 917 (1992). “The level of specificity must be such...that the officers executing the warrant are ‘able to identify the things to be seized with reasonable certainty.’” *United States v. Sleet*, 54 F.3d 303, 307 n.1 (7th Cir. 1995).

Although not entirely clear from his motion, Mr. Moseby appears to argue that the search warrant did not support a search of Mr. Moseby's cellular telephone because his cellular telephone was not specifically mentioned in the search warrant application or identified in the warrant itself. But Mr. Moseby does not argue that probable cause was lacking for the issuance of the search warrant. Nor does he provide any legal authority to support the notion that a search warrant which authorized the seizure and search of “[c]ellular telephones and all electronic data stored within the memory of the cellular telephones” – as the warrant did here – did not allow the search of a cellular telephone belonging to someone who did not live at the residence and who law enforcement did not expect to be there. The Court finds that all of the constitutional requirements for the search of Mr. Moseby's cellular telephone seized pursuant to the November 15, 2017 search warrant are met here. The warrant was based on a sworn application, establishing probable cause, and describing the property (“cellular telephones and all electronic data stored within the memory of the cellular telephones”) with particularity. *See United States v. Granley*, 2016 WL 11186990, *11 (D. Minn. 2016) (search warrant allowing search of personal electronic devices including, but not limited to, cellular telephones and other data storage medium was not overly broad and supported search of defendant's cellular telephone and tablet even where the particular cellular telephone and tablet were not specifically listed in the search warrant application).

C. Good Faith Exception

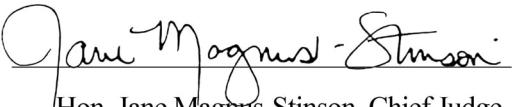
As discussed above, the Court finds that the November 15, 2017 search warrant was valid as it related to the search of Mr. Moseby's cellular telephone. However, even if it were not valid, Mr. Moseby is not entitled to suppress evidence from the cellular telephone due to the good faith exception. Under the good faith exception, “the fruits of a search based on an invalid warrant may be admitted if the officers who executed the search relied upon the warrant in good faith.”

States v. Yarber, 915 F.3d 1103, 1106 (7th Cir. 2019) (citing *United States v. Orozco*, 576 F.3d 745, 750 (7th Cir. 2009)). “[A]n officer’s decision to obtain a warrant creates a presumption that the officer acted in good faith.” *Yarber*, 915 F.3d at 1106. Mr. Moseby argues that the good faith exception does not apply because law enforcement should have known that that Mr. Moseby’s was not an “interested target” referred to in the search warrant application. But he ignores the fact that the search warrant authorized the seizure and search of “cellular telephones” as part of an investigation into a drug conspiracy. Law enforcement properly relied on the search warrant to seize and search just that – a cellular telephone. Even if the search warrant were invalid – and it was not – the good faith exception prohibits the suppression of evidence obtained from Mr. Moseby’s cellular telephone.

III. CONCLUSION

For the foregoing reasons, Mr. Moseby’s Objection to the Government’s Use of Wiretap Transcript Designations, [773], is **OVERRULED** and his Motion to Suppress, [777], is **DENIED**.

Date: 7/5/2019



Hon. Jane Magnus-Stinson, Chief Judge
United States District Court
Southern District of Indiana

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